

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DARYL HOWARD,

Plaintiff/Counter-Defendant,

V.

DOLLAR TREE STORES, INC.,

Defendant/Counter-Plaintiff.

Case No. 1:22-cv-04874

Hon. Virginia Kendall

Magistrate Judge Beth W. Jantz

**DOLLAR TREE STORES, INC.’S MOTION FOR LEAVE TO ALLOW WITNESSES
PHILLIP DENNIS-KULAK AND RUSS ROTHENFLUH TO TESTIFY
VIA VIDEOCONFERENCE AT TRIAL DUE TO THEIR MEDICAL CONDITIONS**

Defendant/Counter-Plaintiff Dollar Tree Stores, Inc. (“DTS”), pursuant to Rule 611 of the Federal Rules of Evidence, respectfully moves this Court to allow witnesses Phillip Dennis-Kulak and Russ Rothenfluh to testify via videoconference during the trial on September 8-12, 2025 due to their respective medical conditions, which do not and will not allow them to travel during the trial (“Motion”). In support of the Motion, DTS states as follows:

1. Trial is set in the above-referenced case for September 8-12, 2025.
2. DTS has identified Mr. Dennis-Kulak and Mr. Rothenfluh as witnesses who DTS will call to testify.
3. Plaintiff/Counter-Defendant Daryl Howard (“Howard”) has identified Mr. Dennis-Kulak as a witness who Howard will call to testify.
4. Mr. Dennis-Kulak had back surgery in June 2025, was on a leave of absence in July 2025, and has subsequently had related medical complications that have left him unable to travel from his home in Florida through at least September 2025. A copy of Mr. Dennis-Kulak’s medical restrictions is attached hereto as **Exhibit A**, which the undersigned has contemporaneously submitted under seal to Howard’s counsel and this Court via email.

5. Mr. Rothenfluh's heart failed the week of August 11, 2025 and he was hospitalized for five days. He is currently recovering and homebound. He cannot and will not be able to travel from his home during the trial. A copy of Mr. Rothenfluh's declaration is attached hereto as **Exhibit B**.

6. To accommodate the medical conditions and recovery of Mr. Dennis-Kulak and Mr. Rothenfluh, DTS respectfully requests this Court allow both witnesses to testify remotely via videoconference during trial.

7. The absence of either witness would prejudice DTS's defenses to Howard's claims and prosecute DTS's counterclaims against Howard, as the witnesses were the first and second points of contact for the security services DTS retained from Howard. May 20, 2014 Email, Joint Trial Exhibit No. 4, attached hereto as **Exhibit C**; *see* Fed. R. Civ. P. 611(a) ("Mode and Order of Examining Witnesses and Presenting Evidence. (a) Control by the Court; Purposes. The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence..."); *see also Loinaz v. EG & G, Inc.*, 910 F.2d 1, 6-10 (1st Cir. 1990) (vacating jury verdict where defendant could not call key witness out of turn for medical reasons).

8. DTS has brought this Motion two days after confirming the scope of the above witnesses' medical restrictions.

9. On August 18, 2025, the undersigned counsel met and conferred with Howard's counsel via telephone, and confirmed Howard opposes the relief sought in the Motion.

10. DTS has brought the Motion in good faith and not for purposes of undue delay.

11. Consistent with this Court's Standing Order, DTS has noticed this Motion for presentment on Wednesday, August 27, 2025 at 9:30 a.m., but notes the parties' Final Pretrial Conference is set for August 29, 2025.

WHEREFORE, Defendant/Counter-Plaintiff Dollar Tree Stores, Inc. respectfully requests this Court enter an Order:

- i) Granting the Motion;
- ii) Allowing Mr. Dennis-Kulak and Mr. Rothenfluh leave to testify at trial remotely via videoconference; and
- iii) Granting such additional relief this Court deems just and appropriate.

Respectfully submitted,

Defendant/Counter-Plaintiff Dollar Tree Stores,
Inc.,

Dated: August 20, 2025.

By: /s/Zev Grumet-Morris
One of Its Attorneys

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on August 20, 2025, he electronically filed the foregoing with the Clerk of the Court using the ECF system, which will provide notice to the following counsel of record:

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